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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,676	08/29/2003	William G.F. Kelly	CHI-0869-CIP	9313
27777 7590 09/19/2008 PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003				
EXAMINER				
COLE, ELIZABETH M				
ART UNIT		PAPER NUMBER		
1794				
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09/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/651,676

Applicant(s)

KELLY ET AL.

Examiner

Elizabeth M. Cole

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-8, 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. Claims 1-3, 11, 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suda et al, U.S. Patent NO. 5,078,710 in view of Langdon, U.S. Patent No. 5,500,270. Suda et al discloses a composite topsheet for use with an absorbent core and an impermeable backsheet comprising a first layer comprising a plurality of apertures, (see figure 15, element 4), which further comprises a plurality of discrete macrofeatures, wherein the macrofeatures comprise apertures in the sidewalls. The base of the macrofeatures contacts the top surface of the second layer of the composite topsheet which maybe a nonwoven layer. See col. 6, lines 43-67. Both layers are fluid permeable. All of the apertures are substantially separate from the second layer. The tops of the macrofeatures are substantially planar. A layer of nonwoven fibers can be deposited on the surface of the first layer so that the body side layer would be a nonwoven fabric in this embodiment. See col. 2, lines 23-26. Suda et al teaches that the height of the surface material should be 0.1-5 mm which encompasses the claimed height. See col. 3, lines 57-62. Suda et al differs from the claimed invention because it does not teach that both layers are film layers. Langdon discloses a laminate material. The first and second layers of the laminate material can be independently nonwoven webs, film, microporous sheets, porous sheets, etc. The first and second sheet can be apertured. See col. 3, lines 3-22. A plurality of spacer elements which correspond to the claimed projecting macrofeatures are disposed between and attached to the first and second layers. The spacers can either be adhesively or thermally bonded to the layers or can be cast as part of the layers. See col. 7, lines 1-16. Therefore, Langdon teaches forming a composite coversheet for absorbent articles that the two layers can

be either nonwovens, films, or porous or microporous sheets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a film as the second layer in Suda rather than a nonwoven layer as the second layer of the composite topsheet in Suda, in view of the teaching of Langdon that nonwovens and film are recognized in the art to be equivalent, known materials for use for this purpose.

2. Claims 6-8, 12, 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Suda et al, U.S. patent No. 5,078,710. Suda et al discloses a composite topsheet for use with an absorbent core and an impermeable backsheet comprising a first layer comprising a plurality of apertures, (see figure 15, element 4), which further comprises a plurality of discrete macrofeatures, wherein the macrofeatures comprise apertures in the sidewalls. The base of the macrofeatures contacts the top surface of the second layer of the composite topsheet which maybe a nonwoven layer. See col. 6, lines 43-67. Both layers are fluid permeable. All of the apertures are substantially separate from the second layer. The tops of the macrofeatures are substantially planar. A layer of nonwoven fibers can be deposited on the surface of the first layer so that the body side layer would be a nonwoven fabric in this embodiment. See col. 2, lines 23-26. Suda et al teaches that the height of the surface material should be 0.1-5 mm which encompasses the claimed height. See col. 3, lines 57-62.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suda et al, U.S. Patent No. 5,078,710 in view of Langdon, U.S. Patent No. 5,500,270. Suda et al discloses a composite topsheet for use with an absorbent core and an impermeable

backsheet comprising a first layer comprising a plurality of apertures, (see figure 15, element 4), which further comprises a plurality of discrete macrofeatures, wherein the macrofeatures comprise apertures in the sidewalls. The base of the macrofeatures contacts the top surface of the second layer of the composite topsheet which maybe a nonwoven layer. See col. 6, lines 43-67. Both layers are fluid permeable. All of the apertures are substantially separate from the second layer. The tops of the macrofeatures are substantially planar. A layer of nonwoven fibers can be deposited on the surface of the first layer so that the body side layer would be a nonwoven fabric in this embodiment. See col. 2, lines 23-26. Suda et al teaches that the height of the surface material should be 0.1-5 mm which encompasses the claimed height. See col. 3, lines 57-62. Suda et al differs from the claimed invention because it does not teach that the first layer is a nonwoven fabric. Langdon discloses a laminate material. The first and second layers of the laminate material can be independently nonwoven webs, film, microporous sheets, porous sheets, etc. The first and second sheet can be apertured. See col. 3, lines 3-22. A plurality of spacer elements which correspond to the claimed projecting macrofeatures are disposed between and attached to the first and second layers. The spacers can either be adhesively or thermally bonded to the layers or can be cast as part of the layers. See col. 7, lines 1-16. Therefore, Langdon teaches forming a composite coversheet for absorbent articles wherein the two layers can be either nonwovens, films, or porous or microporous sheets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a nonwoven as the first layer in Suda, in view of the teaching of

Langdon that nonwovens and film are recognized in the art to be equivalent, known materials for use for this purpose.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-3, 6-8, 10-16, 17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-4, 10-11, 14-16, 18-19, 22-27, 29-31 of copending Application No. 10366,051. Although the conflicting claims are not identical, they are not patentably distinct from each other because each discloses a two layered apertured structure having macrostructures which extend from one layer to the other layer, wherein both layers are fluid permeable.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-3,6-8, 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langdon et al, U.S. Patent No. 5,500,270. Langdon discloses a laminate material.

The first and second layers of the laminate material can be independently nonwoven webs, film, microporous sheets, porous sheets, etc. The first and second sheet can be apertured. See col. 3, lines 3-22. A plurality of spacer elements which correspond to the claimed projecting macrofeatures are disposed between and attached to the first and second layers. The spacers can either be adhesively or thermally bonded to the layers or can be cast as part of the layers. See col. 7, lines 1-16. For purposes of this rejection, the spacers will be construed as being integral with either the first or second sheet. The surfaces of the spacer will be construed as being the surface of the sheet at regions where the spaces occur. The first surface of the second layer will be the surface which is facing the first layer 42, the second surface of the second layer will be the opposite surface. Looking at figures 3 and 4, it is seen that the first and second layers each comprise first and second surfaces. The laminate material 40 comprises a first fluid pervious sheet or layer 42 and a second fluid pervious sheet or layer 46. The first and second fluid pervious sheets are provided with apertures 43 and 47. The apertures 47 originate in the first surface of the second layer 46 and extend in the direction of the second surface and terminate in the second plane. Since the claims do not specify that the second surface and the second plane are different, the second plane and the second surface are construed as being the same. The second layer 46 has a plurality of macrofeatures which are referred as spacer 48 which project from the second layer towards the first layer. Since the projecting elements are integral with the second layer and can be formed by casting the film so as to form the projections, the first surface of the second layer will be coincident with the first plane at the

macrofeatures. The first layer 42 is in contact with the second layer 46 through the disconnected macrofeatures or spacers. . Langdon teaches that the laminate material can be used as a topsheet for an absorbent article comprising an absorbent core and a backsheet. The macrofeatures of Langdon are not apertured and have a generally planar top surface. With regard to whether the first or second layer has the projecting features, since Langdon shows a two layered laminate and since either or both layer can be nonwoven or formed film, Langdon meets these limitations. . Langdon differs from the claimed invention because Langdon does not disclose the size and pattern of the macrofeatures. However, Langdon teaches controlling the dimensions of the spacer elements, (or macrofeatures), so as to optimize the flow of fluids through the laminate material. Langdon teaches that the height, frequency and cross sectional area of the spacers determine the size of the capillary zone. See col. 3 lines 22-40 and col. 7, lines 55-66. . Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have selected the dimensions of the spacer elements through the process of routine experimentation in order to produce a laminate material having the optimum fluid flow properties.

6. Applicant's arguments filed 6/17/08 have been fully considered but they are not persuasive. Applicant argues that the present claims require that the apertures have sidewalls that terminate in a second plane, not that the sidewalls themselves have apertures. However, the structure of Suda meets the claimed structure because the apertures are spaced from the first layer and extend generally in the direction of the

second surface and terminate in a second plane. The claims do not preclude the apertures from being located in the sidewalls of the macrofeatures as taught by Suda. The aperture sidewalls meet the limitation of being spaced from the first layer. Suda teaches disposing a nonwoven layer onto the layer having the macrofeatures and therefore the first layer would be in contact with the second layer at the macrofeatures and between the macrofeatures as claimed in claim 6. Further, Applicant argues that Suda does not teach that the macrofeatures are visibly distinct from the rest of the layer. However, since the macrofeatures have the claimed size they would have to be visible since the claimed macrofeatures are visible.

7. With regard to claim 6, Applicant repeats the arguments set forth above.

However, these arguments are not persuasive for the reasons set forth above.

8. Applicant's amendment to the claims to remove the word "linear" has overcome the 112 1st paragraph rejection. However, the previous rejection over Langdon which was withdrawn in view of the amendment adding the word "linear" has been reinstated for the reasons of record.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

The examiner's supervisor Rena Dye may be reached at (571) 272-3186.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

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